



**NATURAL
RESOURCES**
COMMITTEE • DEMOCRATS
RANKING MEMBER, PETER DeFAZIO

H.R.4315: “21ST CENTURY ENDANGERED SPECIES TRANSPARENCY ACT”
(HASTINGS, R-WASH.)

Summary

H.R. 4315 packages together four bills that would amend the Endangered Species Act. The bill is the product of Chairman Hastings’ “Endangered Species Working Group,” which included no Democratic Members. Republicans argue that this package will increase transparency and accountability, while injecting more scientific information into the ESA listing process and reducing litigation. In reality, the legislation would make a mockery of science, create a web of red tape, open up new causes for lawsuits, and divert already scarce resources away from species protection and recovery.

Section by Section

Section 1 is the short title. **Section 2** (H.R. 4315) requires the Secretary of the Interior to make available on the Internet all scientific and commercial data used to make ESA species listing determinations. There is an exception for personal information protected by state law. No additional funding would be provided to the Department to carry out this responsibility.

Section 3 (H.R. 4317) mandates that the Secretary of the Interior provide states affected by a species listing all data used to make the listing determination and requires the Secretary to consider any data submitted by a state, tribal, or county government as the “best scientific and commercial data available.” There is no requirement for quality control and no mechanism for addressing conflicting data.

Section 4 (H.R. 4316) requires the Secretary of the Interior to submit an annual report to Congress detailing expenditures by the Departments of Interior, the Forest Service, the National Marine Fisheries Service, and the Bonneville, Western Area, Southwestern and Southeastern Power Administrations on ESA lawsuits. The required information would include case numbers and links to decisions, a description of claims, name of each affected Federal agency, funds (broken down by account) expended by each agency in receiving and responding to notices, preparing for or executing litigation or negotiating settlements, or providing other assistance with respect to a lawsuit, the number of employees that participated in activities related to the suit, and attorney fees and other expenses awarded (broken down by account), along with a justification of the awards. Section 4 also requires the Secretary of the Interior to create a publically-available, searchable database of this information. No additional funding would be provided to the Department to carry out this responsibility.

Section 5 (H.R. 4318) would weaken the ESA’s citizen suit provision by removing the courts’ discretion to award costs of litigation, including reasonable attorney and expert witness fees, to successful plaintiffs. Under this provision, attorney fees would be limited to \$125 per hour in most cases.

Reasons to oppose H.R. 4315:

- H.R. 4315 is the predetermined outcome of a partisan “working group” created by House Republicans to attack the ESA. No Democratic Members were invited to join or offer input to the working group, despite the fact that Ranking Member DeFazio has made it clear there is room for discussion of a bipartisan ESA reauthorization.
- As the House wastes time on counterproductive ESA legislation that will never be considered by the Senate, wildfires are ravaging communities across the West and the federal funding needed to respond is expected to lapse this summer.
- The bill does nothing to enhance species recovery efforts. The ESA has prevented 99 percent of listed species from going extinct – even in the face of habitat loss, climate change, and other pressures – but Republicans still argue the law has failed because more species have not recovered to the point that they no longer need ESA protection. However, this bill contains no provisions that would increase the likelihood that any listed species will recover. Instead, it diverts scarce resources away from recovery efforts and toward more paperwork, making recovery and eventual delisting more difficult.
- By requiring all data – including location data – supporting a species listing to be posted online, the bill would create a “roadmap” for poachers interested in killing endangered wildlife. Iconic American species like gray wolves and grizzly bears already have enough problems without this bill helping to facilitate illegal killing.
- The Department of the Interior would be forced to accept as “best available science” for making ESA listing determinations any data submitted by a state, tribe or county. That “data” would not have to actually be the “best,” nor would it even have to be “science” – but the Department of the Interior would have to treat it as such. Anything from a state’s official position denying climate change to a county’s decree that evolution is a hoax would be in play. Further, the potential for affected states, tribes or localities to submit conflicting data that would all have to be treated as “the best” opens up a whole new world of litigation opportunities.
- The legislation would impose cumbersome reporting requirements on the Department of the Interior for questionable purposes. Despite the fact that attorney’s fees for cases involving the Endangered Species Act are a fraction of a percent of all attorney fees awarded by the Federal Government – the \$18 million the Bush Administration awarded in a single telecommunications case it lost in 2006 is more than all ESA awards from 2009-2011 – Republicans continue to insist that conservation groups enjoy windfall profits from attempts to hold the government accountable. Compiling and reporting on this information, especially at the level of detail required by this bill, would divert a significant amount of agency time and money away from protecting and recovering species, while doing nothing to make litigation less necessary.
- Courts would be prohibited from awarding market-rate attorneys’ fees to prevailing parties in citizen suits, limiting fees to \$125 per hour in most cases. This would effectively bar the courthouse doors to most ordinary citizens and the groups that represent them by making them unable to afford the specialized expertise of environmental lawyers. By contrast, House republicans paid their attorneys \$520 per hour in taxpayer dollars in their unsuccessful attempt to revive the Defense of Marriage Act.